National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
February 25, 2005	CASES SUMMARIZED	W-2988
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Big Sky Locators, Inc. (28-CA-17698; 344 NLRB No. 15) Las Vegas, NV, Feb. 14, 2005. In affirming the administrative law judge's findings, the Board held that the Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing recognition from Electrical Workers IBEW Local 396 as the recognized collective-bargaining representative of the Respondent's employees in the appropriate unit; failing to continue in effect terms and conditions of employment as set forth in the parties' collective-bargaining agreement; failing to make Line Construction Benefit Fund health insurance premium payments and thereby failing to continue in effect employees' coverage; and unilaterally placing into effect an alternative health care plan and imposing premium costs on employees. [HTML] [PDF]

The Board modified the order and notice to conform with the judge's findings and to require the Respondent to make available all records necessary to reimburse employees for unremitted dues and to add standard language regarding conditional notice mailing.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 396; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Las Vegas, June 11 and 12, 2002. Adm. Law Judge Gerald A. Wacknov issued his decision Aug. 27, 2002.

Center for the Disabled (3-RC-11255; 344 NLRB No. 21) Albany, NY Feb. 16, 2005. The Board adopted the hearing officer's conclusion that the Employer established a valid business justification with respect to both the grant of the wage increases and the timing of their announcement and, overruled the Petitioner's (Needletrades Employees) Objection 1, and certified the results of the rerun mail ballot election conducted from May 13 through 28, 2004. In the absence of exceptions, it also adopted the hearing officer's recommendation that the Petitioner's Objection 3 be overruled. The tally of ballots showed 285 for and 381 against, the Petitioner, with 83 challenged ballots, an insufficient number to affect the results of the election. [HTML] [PDF]

Objection 1 alleged that the Employer, by announcing and then partially granting a "Twelve Month 10% Pay Plan for Center Staff" during the critical period between the first and second elections, engaged in objectionable conduct. The Petitioner argued that while the "presence of a legitimate business justification may be a viable defense to a § 8(a)(1) allegation, it does not allow the employer to escape responsibility here in an unconsolidated representation case."

Contrary to the Petitioner's argument, the Board cited *Sun Mart Foods*, 342 NLRB No. 22, slip op. at 2 (2004), also an "unconsolidated representation case" which in pertinent part reads:

The Board will infer that an announcement or grant of benefits during the critical period is objectionable; however, the employer may rebut the inference by establishing an explanation other than the pending election for the timing of the

announcement or the bestowal of the benefit. *Star, Inc.*, 337 NLRB 962, 963 (2002). The employer may rebut the inference by showing that there was a legitimate business reason for the timing of the announcement or for the grant of the benefit.

While Member Schaumber dissented in *Sun Mart Foods*, he did not do so here because the hearing officer considered the employer's business justification defense. In *Sun Mart Foods*, the Board majority found that although the employer presented a legitimate business justification for its preelection decision to grant employees a benefit by remodeling the grocery where they worked, it failed to establish such a defense with respect to the timing of the announcement just 2 days before the election, thereby interfering with the election.

(Chairman Battista and Members Liebman and Schaumber participated.)

Electric By Miller, Inc. (17-CA-22667; 344 NLRB No. 20) Grove, OK, Feb. 16, 2005. The Board adopted the recommendations of the administrative law judge and found that the Respondent violated Section 8(a)(1) of the Act by threatening its employees with closure of the business if they selected Electrical Workers IBEW Local 584 as their collective-bargaining representative and falsely announcing closure of the business in order to effectuate the discharge of a prounion employee, and violated Section 8(a)(1) and (3) by discharging John R. Carter because of his union activities. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 584; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Miami, OK on Sept. 14, 2004. Adm. Law Judge George Carson II issued his decision Nov. 3, 2004.

International Transportation Service, Inc. (21-CA-34968; 344 NLRB No. 22) Long Beach, CA Feb. 18, 2005. In agreement with the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) of the Act by informing an employee that she was being discharged because she engaged in union and protected concerted activity, specifically picket line activity on behalf of Longshoremen Local 63, and violated Section 8(a)(1) and (3) by terminating employee Deanna Tartaglia because she engaged in union and protected concerted activity, specifically picket line activity on behalf of the Union. [HTML] [PDF]

Chairman Battista and Member Schaumber noted that the judge relied on the Board's decision in *Teamsters Local 115 (Vila-Barr Co.)*, 157 NLRB 588 (1966), in finding that the picket line activity was protected. While they do not pass on the correctness of the *Vila-Barr*

decision, and in the absence of a three-member Board majority to overrule *Vila-Barr*, Chairman Battista and Member Schaumber applied that precedent and joined their colleague in affirming the judge's finding that the picketing was protected.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Longshoremen Local 63; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, June 5-6, 2003. Adm. Law Judge Gregory Z. Meyerson issued his decision Sept. 10, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

American Red Cross Missouri-Illinois Blood Services Region (Teamsters Local 682) St. Louis, MO February 14, 2005. 14-CA-27956, 14-RC-12500; JD-09-05, Judge Bruce D. Rosenstein.

Laguardia Associates LLP, d/b/a Crowne Plaza Laguardia (New York Hotel and Motel Trades Council) East Elmhurst, NY February 14, 2005. 29-CA-26660; JD(NY)-08-05, Judge Steven Davis.

Hebrew Home of South Beach, Inc. (an Individual) Miami Beach, FL February 17, 2005. 12-CA-23633, et al.; JD(ATL)-03-05, Judge John H. West.

Friendly Cab Company, Inc., et al. (Teamsters Local 70) Oakland, CA February 10, 2005. 32-CA-21613-1; JD(SF)-09-05, Judge Jay R. Pollack.

The Neighborhood House Association (Service Employees Local 2028) San Diego, CA February 11, 2005. 21-CA-36407, JD(SF)-11-05, Judge Lana H. Parke.

Brubacher Excavating, Inc. (Operating Engineers Local 542 and Laborers Mid-Atlantic Regional Organizing Coalition) Bowmansville, PA February 18, 2005. 4-CA-32437, 32332; JD-11-05, Judge George Alemán.

United States Postal Service and National Rural Letter Carriers' Association (an Individual) Scottsdale, AZ February 17, 2005. 28-CA-19175(P), 19618(P), 28-CB-8075(P); JD(SF)-16-05, Judge Gregory Z. Meyerson.

Jacobs Farm/Del Cabo, Inc. (an Individual) South San Francisco, CA February 11, 2005. 20-CA-31905; JD(SF)-06-05, Judge William L. Schmidt.

Bud Antle, Inc. (Fresh Fruit and Vegetable Workers [UFCW] Local 1096) Salinas, CA February 17, 2005. 32-CA-21181, 21596; JD(SF)-15-05, Judge Burton Litvack.

Enloe Medical Center (Health Care Workers and Service Employees Local 250) Chico, CA February 14, 2005, 20-CA-31806-1, 20-RC-17937, et al.; JD(SF)-12-05, Judge Gerald A. Wacknov.

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Alpha Baking Company, Inc. (Teamsters Local 344) (30-CA-17029, 344 NLRB No. 19) Cudahy, WI February 16, 2005. [HTML] [PDF]

Guardian Armored Assets, L.L.C., Inc. and Guardian Armored Security (Security, Police and Fire Professionals [SPFPA]) (7-CA-47762, 344 NLRB No. 18) Highland Park, MI February 17, 2005. [HTML] [PDF]

Point Park University (Newspaper Guild of Pittsburgh/Communications Workers Local 38061) (6-CA-34243, 344 NLRB No. 17) Pittsburgh, PA February 17, 2005. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

All Metals Supply Inc., Oroville, CA, 20-RC-17973, February 16, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Avalon Electric Corp., New York, NY, 2-RC-22895, February 17, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Catalyst Woodworking, Incorporated, Crystal Lake, IL, February 17, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Boardwalk Market, Tiburon, CA, 20-RM-2854, February 16, 2004 (Chairman Battista and Members Liebman and Schaumber)

Eller-ITO Stevedoring Company, LLC, Miami, FL, 12-RC-9096, February 16, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting)
